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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,777	02/27/2002	Jan Alan Eglen	26054-5	1278
7590	06/02/2005		EXAMINER	
Charles P. Schmal, Esq. Woodard, Emhardt, Naughton, Moriarty and McNett Bank One Center/Tower 111 Monument Circle, Suite 3700 Indianapolis, IN 46204-5137			NELSON, FREDA ANN	
			ART UNIT	PAPER NUMBER
			3639	
DATE MAILED: 06/02/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/084,777	EGLEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Freda A. Nelson	3639	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 April 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-14, 19-42, 60-74, 79-91, 94, 96 and 110-185 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 9-14, 19-42, 88, 110-161, 163-171, and 175-183 is/are allowed.
- 6) Claim(s) 60-62, 67, 72-74, 80, 91, 94, 96, 162, 172-174, 184 and 185 is/are rejected.
- 7) Claim(s) 63-66, 68-71, 79 and 81-90 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

This action is in response to applicant's communication filed on April 27, 2005 wherein:

Claims 9-14, 19-42, 60-74, 79-91, 94, 96, and 110-185 are currently pending;

Claim 60 has been amended;

Claims 1-8, 15-18, 43-59, 75-78, 92-93, 95, and 97-109 have been canceled; and

Claims 173-185 have been added.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 185 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner is unable to determine what the applicant is claiming in the following language: “; and the clients”.

### ***Claim Rejections - 35 USC § 103***

2. Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over White (Patent Number 6,644,547) in view of Phillips et al. (US PG Pub 2002/0016348).

In claim 60, White discloses a retail terminal/customer workstation that consolidates all of the associated functions the retail devices and non-associated functions into a single, easy to use workstation (col., 2, lines 49-52). White further discloses that the CSW 40 is connectable to the internet 62 via the server 58 to allow

the showing of internet pages/information/advertisements on the display 44 and perform interactive functions as are known in the art by web-based technology with the aid of the touch-screen 60 (col. 8, lines 3-7). White still further discloses that the server 58 stores various information/data in databases, PLUs, and the like wherein such data may pertain to product information, product price, product location within the store, a store map/locator, product discounts/offers, coupons (media content), recipes, inventory, etc (col. 7, lines 66 through col. 8, line 3).

White does not disclose that the processor is operable to adjust the pricing of the item by comparing profits generated by the item at different price levels. Phillips et al. disclose that the dynamic pricing system 100 then determines costs for the product and combines the costs result with the predicted sales at the different price levels to determine a set of optimal, profit maximizing prices for a product in different markets. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of White to include the feature of Phillips in order to maximize profits.

3. Claims 61-62, 67, 72-74, 80 and 162 are rejected under 35 U.S.C. 103(a) as being unpatentable over White (Patent Number 6,644,547) in view of Phillips et al. (US PG Pub 2002/0016348).

In claims 61-62, 67, 72-74, and 80, White does not disclose that the processor is operable to increase the pricing of the item when profit at a current price for the item is at least greater than a previous best profit for the item. Phillips et al discloses that the dynamic pricing system 100 may perform forecasting through known statistical methods, such as linear regression or non-linear regression analysis using curve-fitting based on exponential, power, logarithmic, Gompertz, logistic, or parabola functions. In addition, numerous averaging, smoothing, and decomposition techniques to increase the accuracy of statistical forecasts are known and may be employed by the dynamic pricing system 100 (paragraph 0036). Phillips et al. further disclose that the dynamic pricing system 100 includes a Price Optimizer (OPT) 200 that produces a set of optimal prices that maximize total profit under given constraints across all channel segments, where the constraints are defined either by the general settings of the pricing problem or by the specific rules selected by the user (paragraph 0052). Phillips et al further disclose that alternatively, the control variable within the system to determine price sensitivity (currently the price of the product) can be replaced by the ratio of the seller's price of the product to the competitor's price or the difference of the two values (paragraph 0064). Phillips et al. still further disclose that because that date range over which forecasts are made may depend on the length of restocking intervals, these intervals should be chosen carefully (paragraph 0033). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the

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apparatus of Walter et al. to include the dynamic pricing system of Phillips et al. in order to provide the user with a more flexible pricing device to get optimal profits.

In claim 162, White does not disclose that the processor is operable to adjust pricing of the item based at least on demand for the item. Phillips et al. disclose that where pricing or sales of a first product effect pricing or sales of a second product, the OPT 200 cannot assume that demand (or sales) for one product is independent of demand (or sales) for other products and that cross-product price elasticity does not exist. The OPT 200 must therefore use a sales forecast from the SF 160 that accounts for this dependency, and then product pricing that maximizes sales from both products. It would have been obvious to modify the apparatus of White to include the system of Phillips et al. in order to make sure that the inventory is available for use to satisfy the demand.

4. Claims 91, 94, and 96 are rejected under U.S.C. 103(a) as being unpatentable over White (Patent Number 6,644,547) in view of Aggarwal et al. (Patent Number 6,631,413) in further view of Downs et al. (6,226,618).

In claims 91, 94 and 96, White does not disclose a processor operable to receive the item from a content supplier over the network; and said processor is operable to compensate the content supplier for the purchases of the item. Aggarwal et al. disclose a system and method for managing and allocating spare bandwidth in a manner which optimizes the revenue and ultimately the profits of e-commerce merchant's delivery services by scheduling the broadcasts of various digital objects efficiently by controlling delivery price options offered to a given customer based on other outstanding activity and, by pricing the delivery options offered to a given customer based on other outstanding activity col. 3, lines 53-62). Aggarwal et al. still further disclose that many customers are now purchasing digital objects including music and audio CDs and movie and video DVDs col. 1, lines 13-17). Downs et al. disclose a method and apparatus of securely providing data to a user's system (abstract). Downs et al. further disclose that as the Content 113 is being received by the SC(s) Processor 192, it loads the Content 113 data into memory buffers for decryption (col. 81, lines 62-64). Downs et al. still further disclose that deployment of an electronic distribution system provides the Digital Content Providers the ability to achieve fast settlement of payment through immediate sales reporting and electronic reconciliation as well as gain secondary sources of revenue through redistribution of content (col. 2, lines 35-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Aggarwal et al. to include the feature of Downs et al. in order to optimize profits of the merchant's delivery services (Aggarwal et al.; abstract).

5. Claims 172-174 and 184-185 are rejected under U.S.C. 103(a) as being unpatentable over Aggarwal et al. (Patent Number 6,631,413) in view of Downs et al. (6,226,618).

In claim 172-174 and 184-185, Aggarwal et al. disclose a system and method for managing and allocating spare bandwidth in a manner which optimizes the revenue and ultimately the profits of e-commerce merchant's delivery services by scheduling the broadcasts of various digital objects efficiently by controlling delivery price options offered to a given customer based on other outstanding activity and, by pricing the delivery options offered to a given customer based on other outstanding activity col. 3, lines 53-62). Aggarwal et al. further disclose that many customers are now purchasing digital objects including music and audio CDs and movie and video DVDs (col. 1, lines 13-17). Aggarwal et al. still further disclose that system 10 includes an intelligent scheduler 12 for transmitting purchased digital objects to the customers (col. 4lines, 49-50). Aggarwal et al. still further disclose that transmissions from transmission sources 20 are received by receivers or user interfaces 22 wherein each user interface preferably includes a set box 24 which employs software and hardware to receive transmissions of digital objects ordered and delivered over network 18 from transmission sources 20 (col. 5, lines 1-8).

Aggarwal et al. does not disclose a memory containing at least one item. Aggarwal et al. does not further disclose a processor operatively coupled to said memory and responsive to input over a network from one or more clients. Downs et al. disclose a method and apparatus of securely providing data to a user's system (abstract). Downs et al. further disclose that as the Content 113 is being received by the SC(s) Processor 192, it loads the Content 113 data into memory buffers for decryption (col. 81, lines 62-64). Downs et al. still further disclose that deployment of an electronic distribution system provides the Digital Content Providers the ability to achieve fast settlement of payment through immediate sales reporting and electronic reconciliation as well as gain secondary sources of revenue through redistribution of content (col. 2, lines 35-39). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Aggarwal et al. to include the feature of Downs et al. in order to optimize profits of the merchant's delivery services (Aggarwal et al.; abstract).

### ***Conclusion***

6. The following is an examiner's statement of reasons for allowance:
  - A) The prior art for example:
    - (1) White (Patent Number 6,644,547) discloses customer workstation intelligently connectable to a legacy retail system and providing supplemental functionality thereto.
    - (2) Phillips et al. (US PG Pub 2002/0116348) disclose a dynamic pricing system.
    - (3) Downs et al. (Patent Number 6,226,618) disclose an electronic content delivery.
    - (4) Aggarwal et al. (Patent Number 6,631,413) disclose a method for optimizing profits in electronic delivery of digital objects.
  

However, in regard to claims 9-14, 19-42, 63-71, 79, 81-90, 110-161, 163-171, and 175-183, the prior art does not teach or suggest specific manner in which the price is dynamically adjusted as recited in these claims.

  
7. The examiner has cited prior art of interest, for example:
  - 1) Bates et al. (US PB Pub 2002/0083456), which disclose a method and system for pricing a programming event viewed by subscriber group.
  - 2) Dinkin et al. (Patent Number 6,591,253), which disclose a method and system for real time pricing of fine-grained resource purchases.

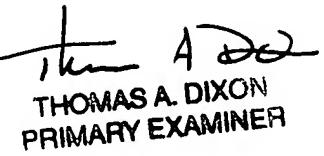
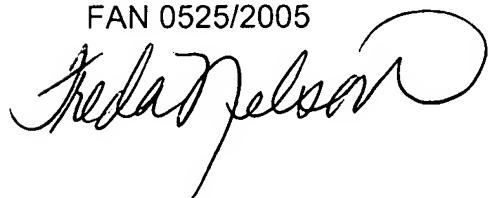
Claims 63-66, 68-71, 79, and 81-90, are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. As allowable subject matter has been indicated, applicant's response must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 C.F.R. § 1.111(b) and section 707.07(a) of the M.P.E.P.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FAN 0525/2005



THOMAS A. DIXON  
PRIMARY EXAMINER